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OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
33rd session
Agenda item 5

92FUND/EXC.33/8
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RECORD OF DECISIONS OF THE THIRTY-THIRD SESSION OF THE EXECUTIVE COMMITTEE

(held on 22 May and 25 May 2006)

Chairman: Captain Carlos Ormaechea (Uruguay)
Vice-Chairman: Rear-Admiral Giancarlo Olimbo (Italy)

Opening of the session

- 0.1 The Executive Committee noted that due to ill health the Director had, for the first time in 21 years, been unable to attend the session and that in his absence the Deputy Director had assumed the function of the Acting Director.
- 0.2 The Executive Committee sent the Director its very best wishes and expressed the hope that he would make a swift recovery.

Procedural matters

1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document 92FUND/EXC.33/1.

2 Examination of credentials

- 2.1 The Executive Committee recalled that the 1992 Fund Assembly had, at its March 2005 session, decided to establish at each session a Credentials Committee composed of five members elected by the Assembly, on the proposal of the Chairman, to examine the credentials of delegations of Member States and that, when the Executive Committee held sessions in conjunction with sessions of the Assembly, the Credentials Committee established by the Assembly should also examine the credentials of the Executive Committee (Executive Committee's Rules of Procedure, Rule (iv)).
- 2.2 The Executive Committee noted that the 2nd session of the 1992 Fund Administrative Council, acting on behalf of the Assembly, had appointed the delegations of Algeria, Australia, Mexico, Russian Federation and Sweden to the Credentials Committee, in accordance with Rule 10 of the Assembly's Rules of Procedure.

2.3 The following members of the Executive Committee were present:

Algeria	France	Spain
Cameroon	Italy	Turkey
Canada	Portugal	United Kingdom
China (Hong Kong Special Administrative Region)	Republic of Korea	Uruguay
Finland	Russian Federation	
	Singapore	

2.4 After having examined the credentials of the delegations of the members of the Executive Committee, the Credentials Committee reported in document 92FUND/EXC.33/2/1 that all the above-mentioned members of the Executive Committee, except the delegation of Cameroon, had submitted credentials which were in order and that the credentials in respect of that delegation were accepted provisionally pending correction of the deficiency set out in the report^{<1>}.

2.5 The following Member States were represented as observers:

Antigua and Barbuda	Greece	Morocco
Argentina	India	Netherlands
Australia	Israel	Nigeria
Bahamas	Japan	Norway
Belgium	Latvia	Panama
Colombia	Liberia	Philippines
Denmark	Malaysia	Poland
Dominican Republic	Malta	South Africa
Gabon	Marshall Islands	Sweden
Germany	Mexico	Vanuatu
Ghana	Monaco	Venezuela

2.6 The following non-Member States were represented as observers:

Brazil	Ecuador	Saudi Arabia
Chile	Peru	

2.7 The following intergovernmental organisations and international non-governmental organisations were represented as observers:

Intergovernmental organisations:

International Oil Pollution Compensation Fund 1971 (1971 Fund)
International Oil Pollution Compensation Supplementary Fund (Supplementary Fund)

International non-governmental organisations:

International Association of Classification Societies Ltd (IACS)
International Association of Independent Tanker Owners (INTERTANKO)
International Tanker Owners Pollution Federation Ltd (ITOPF)
International Union of Marine Insurance (IUMI)
Oil Companies International Marine Forum (OCIMF)

^{<1>} Note by the Acting Director: This deficiency had not been rectified when the final version of this Record of Decisions was issued.

3 Incidents involving the 1992 Fund

3.1 *Erika*

3.1.1 The Executive Committee took note of the developments regarding the *Erika* incident as set out in documents 92FUND/EXC.33/5 and 92FUND/EXC.33/5/Add.1.

Maximum amount available for compensation

3.1.2 It was recalled that the maximum amount available for compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention (135 million SDR) had been calculated by the Director, following the instructions by the Executive Committee, at FFr1 211 966 811 corresponding to €184 763 149 (£127 million).

Shipowner's limitation fund

3.1.3 It was recalled that at the request of the shipowner, the Commercial Court in Nantes had issued an order in March 2000 opening limitation proceedings. It was also recalled that the Court had determined the limitation amount applicable to the *Erika* at FFr84 247 733 corresponding to €12 843 484 (£8.8 million) and had declared that the shipowner had constituted the limitation fund by means of a letter of guarantee issued by the shipowner's liability insurer, the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual).

3.1.4 The Committee recalled that in 2002 the limitation fund had been transferred from the Commercial Court in Nantes to the Commercial Court in Rennes. It was noted that in January 2006 the limitation fund had again been transferred, this time to the Commercial Court in Saint-Brieuc (cf. paragraph 3.1.20).

Undertakings by Total SA and the French Government

3.1.5 The Committee recalled that Total SA had undertaken not to pursue claims against the 1992 Fund or against the limitation fund constituted by the shipowner or his insurer relating to its costs arising from operations in respect of the wreck, the clean-up of shorelines and disposal of oily waste, and a publicity campaign to restore the image of the Atlantic coast, if and to the extent that the presentation of such claims would result in the total amount of all claims arising out of this incident exceeding the maximum amount of compensation available under the 1992 Conventions.

3.1.6 It was recalled that the French Government had also undertaken not to pursue claims for compensation against the 1992 Fund or the limitation fund established by the shipowner or his insurer if and to the extent that the presentation of such claims would result in the maximum amount available under the 1992 Conventions being exceeded, but that the French Government's claims would rank before any claims by Total SA if funds were available after all other claims had been paid in full.

Payments to the French Government

3.1.7 It was recalled that at its October 2003 session the Executive Committee had authorised the Director to make payments to the French State to the extent that he considered that there was a sufficient margin between the total amount of compensation available and the Fund's exposure in respect of other claims (document 92FUND/EXC.22/14, paragraph 3.4.11).

3.1.8 It was recalled that in December 2003 the Director had decided that there was a sufficient margin to enable the 1992 Fund to commence payments to the French State and that the Fund had initially paid €10.1 million (£7.0 million), corresponding to the French Government's subrogated claim in respect of the supplementary payments to claimants in the tourism sector, followed in October 2004 by a further payment of €6.0 million (£4.2 million) relating to the

French Government's supplementary payments made under the scheme to provide emergency payments to claimants in the fishery, mariculture and salt producing sectors administered by OFIMER. It was also recalled that in December 2005 the 1992 Fund had made a payment on account to the French State of €15 million (£10.3 million) towards the costs incurred by the French authorities in the clean-up response.

- 3.1.9 The Committee noted that the Director would consider later in 2006, in the light of developments in the court proceedings, whether a further payment could be made to the French State.
- 3.1.10 In response to a query concerning the timing and modality of further payments to the French Government, the Acting Director stated that it was hoped that substantial further payments could be made in due course provided the Fund's successes in legal proceedings continued.

Claims situation

- 3.1.11 The Committee noted that as at 30 April 2006, 6 990 claims for compensation had been submitted for a total of €208 million (£143 million) and that 98.4% of the claims had been assessed. It was noted that some 1 050 claims totalling €24.3 million (£16.7 million) had been rejected.
- 3.1.12 It was noted that payments of compensation had been made in respect of 5 645 claims for a total of €117.5 million (£80.9 million), out of which Steamship Mutual had paid €12.8 million (£8.8 million) and the 1992 Fund €104.7 million (£72.1 million).

Cause of the incident

- 3.1.13 The Committee recalled that at the request of a number of parties, the Commercial Court (Tribunal de Commerce) in Dunkirk had appointed experts ('expertise judiciaire') to investigate the cause of the incident and that the experts had submitted their report in late November 2005.
- 3.1.14 It was noted that the Director was studying the report with the assistance of the 1992 Fund's experts and that he intended to report his conclusions to the Executive Committee at its October 2006 session.

Legal proceedings

- 3.1.15 The Committee recalled that the Conseil Général of Vendée and a number of other public and private bodies had brought actions in various courts against the shipowner, Steamship Mutual, companies in the Group Total SA and others requesting that the defendants should be held jointly and severally liable for any claims not covered by the 1992 Civil Liability Convention and that the 1992 Fund had requested to be allowed to intervene in the proceedings. It was noted that so far only procedural hearings had been held.
- 3.1.16 It was recalled that the French State had brought actions in the Civil Court in Lorient against Tevere Shipping Co Ltd, Panship Management and Services Srl, Steamship Mutual, Total Transport Corporation, Selmont International Inc, the limitation fund referred to in paragraph 3.1.3 above and the 1992 Fund, claiming €190.5 million (£132 million).
- 3.1.17 It was also recalled that four companies in the Group Total SA had taken legal actions in the Commercial Court in Rennes against the shipowner, Steamship Mutual, the 1992 Fund and others claiming €143 million (£99 million).
- 3.1.18 It was recalled that Steamship Mutual had brought action in the Commercial Court in Rennes against the 1992 Fund, requesting the Court, *inter alia*, to note that, in the fulfilment of its obligations under the 1992 Civil Liability Convention, Steamship Mutual had paid €12 843 484 (£8.8 million) corresponding to the limitation amount applicable to the shipowner, in agreement

with the 1992 Fund and its Executive Committee, and had requested the Court to declare that it had fulfilled all its obligations under the 1992 Civil Liability Convention, that the limitation amount had been paid and that the shipowner was exonerated from his liability under the Convention. It was also recalled that Steamship Mutual had requested the Court to order the 1992 Fund to reimburse it any amount the shipowner's insurer would have paid in excess of the limitation amount.

- 3.1.19 The Committee recalled that claims totalling €497 million (£344 million) had been lodged against the shipowner's limitation fund constituted by Steamship Mutual and that this amount included the claims by the French Government and Total SA. It was noted, however, that most of these claims, other than those of the French Government and Total SA, had been settled and that it appeared therefore that these claims should be withdrawn against the limitation fund to the extent that they related to the same loss or damage. It was noted that the 1992 Fund had received from the liquidator of the limitation fund formal notifications of the claims lodged against that fund.
- 3.1.20 The Committee noted that due to some disturbances by an individual during the hearings in the Commercial Court in Rennes relating to the *Erika* incident, all judges of that Court had decided in January 2006 that they would no longer deal with any proceedings concerning that incident. It was noted that this decision applied to ten actions involving 63 claimants, including the actions mentioned in paragraphs 3.1.18 and 3.1.19 above, and the proceedings relating to the shipowner's limitation fund. It was noted that the individual responsible for the disturbances was the same individual that had driven a tractor with a front-end loader into the premises of the Fund's Claims Handling Office in Lorient and had also disrupted the October 2005 session of the 1992 Fund Executive Committee. It was noted that the President of the Court of Appeal in Rennes had decided in January 2006 to transfer the actions and proceedings from the Commercial Court in Rennes to the Commercial Court in Saint-Brieuc and that the Court in Saint-Brieuc had agreed to deal with these actions and proceedings.
- 3.1.21 It was noted that legal actions against the shipowner, Steamship Mutual and the 1992 Fund had been taken by 796 claimants. The Committee noted that by 30 April 2006 out-of-court settlements had been reached with 432 of these claimants, that the courts had rendered judgements in respect of 80 claims and that actions by 285 claimants (including 145 salt producers) were pending. It was noted that the total amount claimed in the pending actions, excluding the claims by the French State and Total SA, was €62 million (£42.6 million).
- 3.1.22 The Committee noted that the 1992 Fund would continue to hold discussions with claimants whose claims were not time-barred with the aim of arriving at out-of-court settlements if appropriate.

Court judgments in respect of claims against the 1992 Fund <2>

- 3.1.23 The Committee took note of 11 judgements in respect of claims against the 1992 Fund which had been made public since the Executive Committee's February 2006 session.

Commercial Court in Lorient

- 3.1.24 It was noted that the Commercial Court in Lorient had issued six judgements in respect of claims by a wholesaler of beach toys and camping equipment, an oyster producer, an owner of a hotel, bar and restaurant, a food and drinks wholesaler, a frozen food wholesaler and a clothes retailer. It was noted that the Court had in each case stated that it was not bound by the Fund's criteria for admissibility and that it was for the Court to interpret the concept of 'pollution damage' in the 1992 Conventions and to apply it in each individual case by determining whether there was a sufficient link of causation between the event and the damage. It was noted,

<2> The judgments were rendered also against the shipowner and Steamship Mutual. In order not to burden the text in paragraphs 3.1.24 to 3.1.33, reference is made only to the 1992 Fund.

however, that the Court had rejected three of the claims on the grounds that the claimants had not shown that they had suffered a loss that could be linked to the *Erika* incident and had agreed with 1992 Fund's assessment of the losses in two of the other cases.

- 3.1.25 It was further noted that, in respect of the frozen food wholesaler, the Court had stated that the relevant facts had not been established and had therefore appointed a court expert to determine the amount of the losses and whether the losses had resulted directly from the *Erika* incident.

Commercial Court in Quimper

- 3.1.26 The Committee noted two judgements issued by the Commercial Court in Quimper in respect of a fisherman and a cider producer. It was noted that the Court had made the same statement as the Commercial Court in Lorient on the Fund's criteria in respect of one of the claims, but had rejected both claims on the grounds that the claimants had not proved that there had been a link of causation between the alleged losses and the contamination caused by the *Erika* incident.

Commercial Court in La Roche-sur-Yon

- 3.1.27 The Committee noted two judgements issued by the Commercial Court in La Roche-sur-Yon in respect of two camping sites.

- 3.1.28 It was noted that, although the Court had agreed with the Fund's assessment of these claims, as regards one of the claims the Court had stated that the losses suffered by the claimant had been assessed following the criteria established by the Fund summarised in a Manual, but that the criteria could not be considered to constitute agreements between the parties in the sense of Article 31.3 of the Vienna Convention on the Law of Treaties, and that the Resolution of the 1992 Fund's Administrative Council of May 2003, according to which 'the Courts of the States Parties to the 1992 Conventions should take into account the decisions made by the governing bodies of the Fund...' did not have a binding effect but corresponded to an expression of a wish. It was noted that in the judgement the Court had also stated that it was for the competent court to interpret the concept of 'pollution damage' and to apply it to the particular case in order to verify whether there was a sufficient link of causation between the event and the damage and to determine the extent of that damage.

Court of Appeal in Rennes

- 3.1.29 The Committee recalled that a fisherman, having accepted the assessment of his claim by the 1992 Fund and received two provisional payments and signed full and final releases, had subsequently brought legal action against the Fund arguing that the agreement reached with the Fund was not valid and had claimed additional compensation. The Committee also recalled that a claimants' union had joined in these legal proceedings supporting the claimant, who was one of its members, and that although the union had not made a specific claim for loss or damage caused by the *Erika*, it had claimed a symbolic amount of €1 (£0.70) for non-defined damages.

- 3.1.30 The Committee recalled that in a judgement in March 2005 the Commercial Court in Rennes had rejected the claim by the individual claimant on the grounds that, having signed a full and final receipt and release, the claimant had accepted the terms of the proposed agreement and had entered into a valid settlement according to French law. It was further recalled that the Court had found that the claimants' union had not suffered any damage falling within the scope of the 1992 Civil Liability and Fund Conventions and had stated that the actions of the individual claimant and the union were excessive and ordered them to pay a symbolic amount of €1 each to the shipowner, Steamship Mutual and the Fund.

- 3.1.31 The Committee noted that the individual claimant and the union had appealed against the judgement and that in May 2006 the Court of Appeal in Rennes had confirmed the judgement of the Commercial Court with regard to the individual claimant on the grounds that, having signed a full and final receipt and release agreement, the claimant had lost his right to sue the

1992 Fund. It was further noted that the Court had considered that the 1992 Fund, having provided compensation for pollution damage caused by the *Erika* on an amicable basis, had avoided the need for the claimant to be involved in a lengthy and expensive litigation and had also acted according to the requirements of French law. It was noted that the Court had also considered that if the claimant had agreed to the amicable settlement at the time, it was because he had found it convenient to do so, and that his opposition two years later was to be considered too late and invalid.

- 3.1.32 The Committee noted that, as regards the fishermen's union, the Court had stated that the legal action by the union was admissible since any trade union could be party to legal proceedings to defend the general interests of the members of the profession it represented. It was further noted that the Court had recognised the right of the union to question in general terms the processes and modalities of compensation of fishermen and others deriving their income from the sea, but that it should not deal with individual losses suffered by the victims of the pollution. It was noted, however, that the Court had dismissed the union's claim since it was not well founded.

3.2 Prestige

- 3.2.1 The Executive Committee took note of the information regarding the *Prestige* incident contained in document 92FUND/EXC.33/6 submitted by the Director and document 92FUND/EXC.33/6/1 presented by the Spanish delegation.

AMOUNT AVAILABLE FOR COMPENSATION

- 3.2.2 It was recalled that the limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention was approximately 18.9 million SDR or €22 777 986 (£15.7 million) and that on 28 May 2003 the shipowner had deposited this amount with the Criminal Court in Corcubión (Spain) for the purpose of constituting the limitation fund required under the 1992 Civil Liability Convention.
- 3.2.3 It was also recalled that the maximum amount of compensation available under the 1992 Conventions in respect of this incident, 135 million SDR, corresponded to €171 520 703 (£118 million), including the amount actually paid by the shipowner and his insurer (Article 4.4 of the 1992 Fund Convention).

LEVEL OF PAYMENTS

Consideration up to March 2005

- 3.2.4 It was recalled that at the Executive Committee's 21st session, held in May 2003, it had been decided that the 1992 Fund's payments should for the time being be limited to 15% of the loss or damage actually suffered by the respective claimants as assessed by the experts engaged by the 1992 Fund and the London Club and that at its October 2003, February 2004, May 2004, October 2004 and March 2005 sessions the Committee had decided that, in view of the remaining uncertainties as to the level of admissible claims, the level of payments should be maintained at 15% (documents 92FUND/EXC.22/14, paragraph 3.7.24, 92FUND/EXC.24/8, paragraph 3.4.43, 92FUND/EXC.25/6, paragraph 3.2.26, 92FUND/EXC.26/11, paragraph 3.7.30 and 92FUND/EXC.28/8, paragraph 3.4.34).

Consideration in June 2005

- 3.2.5 It was recalled that in June 2005 the Executive Committee had considered an approach put forward by the Director after discussions with the delegations of France, Portugal and Spain, which was based on an increase in the level of payments, an apportionment between the three States of the amount available for compensation and certain undertakings and guarantees to be provided by these States against overpayment. It was also recalled that at that session the

Committee had instructed the Director to make a detailed proposal on the basis of his proposed approach, after consultations with the three delegations concerned and taking into account the points raised during the discussion, covering the legal and technical aspects, to be considered by the Committee at its October 2005 session (document 92FUND/EXC.29/6, paragraph 3.2.78).

Consideration in October 2005

3.2.6 It was recalled that at its October 2005 session the Executive Committee had agreed to the Director's proposal as to the increase in the level of payments, the distribution of the amount payable by the 1992 Fund and the provisions of undertakings and guarantees by the Governments of France, Portugal and Spain and had decided as follows (document 92FUND/EXC.30/10, paragraph 3.7.73):

1. The level of the 1992 Fund's payments should be increased from 15% to 30% of the loss or damage actually suffered by the individual claimant as assessed by the experts appointed by the 1992 Fund and the London Club.
2. The amount of €133 840 000, representing the total amount payable by the 1992 Fund, minus a reserve of 10%, should be apportioned between the three States concerned as set out in the following table:

State	Apportionment (%)	Apportionment (amounts) (rounded figures)	Bank Guarantees ^{<3>}
Spain	85.90%	€115 000 000	€78 850 000
Portugal	0.55%	€740 000	€510 500
France	13.55%	€18 100 000	-
Total	100.00%	€133 840 000	-

3. The Director was authorised to pay the Spanish Government €57 365 000 (£39 million), subject to the Spanish Government undertaking to compensate all claimants who had suffered pollution damage in Spain for amounts no less than 30% of the loss or damage, repay to the 1992 Fund any amount due by it to the Fund if the Executive Committee were to decide to reduce the proportion payable by the Fund for damage in Spain and provide the 1992 Fund with a bank guarantee to cover the difference between the amount paid to it by the Fund and 15% of the assessed amount.
4. The Director was authorised to pay the Portuguese Government €740 000 (£509 000), subject to the Portuguese Government undertaking to repay to the 1992 Fund any amount due by it to the Fund if the Executive Committee were to decide to reduce the proportion payable by the Fund for damage in Portugal, to indemnify the Fund for any amounts that it had paid to other claimants for pollution damage in Portugal and to provide the 1992 Fund with a bank guarantee to cover the difference between the amount paid to it by the Fund and 15% of the assessed amount.
5. The Director was authorised to pay each claimant in France, except the French Government, 30% of the loss or damage as assessed by the 1992 Fund or as decided by a final judgement rendered by a competent court, subject to the French Government undertaking to accept a reduction in the compensation to which it would be entitled, up to the amount of its admissible claim, to protect the 1992 Fund against overpayment to claimants having suffered damage in France, if the Executive Committee were to decide to reduce the level of payments.

^{<3>} The amounts of the bank guarantees correspond to the differences between the apportioned amounts and 15% of the assessed amounts, ie Spain €115 000 000 - €36 150 000 (€241 million at 15%) = €78 850 000; Portugal €740 000 - €229 500 (€1 530 000 at 15%) = €510 500.

6. The bank guarantees to be provided by the Portuguese and Spanish Governments should be given by a financial institution which would have the financial standing laid down in the 1992 Fund's Internal Investment Guidelines and fulfil the other criteria and generally be to the satisfaction of the Director.

Developments after the October 2005 session

- 3.2.7 The Committee recalled that the Portuguese Government had informed the 1992 Fund in December 2005 that it would not provide any bank guarantee and would as a consequence only request payment of 15% of the assessed amount of its claim.
- 3.2.8 It was also recalled that in January 2006 the French Government had given the required undertaking in respect of its own claim.
- 3.2.9 The Committee noted that in March 2006 the Spanish Government had given the required undertaking and bank guarantee and that, as a consequence, a payment of €56 365 000 (£38.5 million) had been made in March 2006. It was noted that, as requested by the Spanish Government, the 1992 Fund had retained €1 million in order to make payments at the level of 30% of the assessed amounts in respect of the individual claims that had been submitted to the Claims Handling Office in Spain. The Committee noted that these payments would be made on behalf of the Spanish Government in compliance with its undertaking, that any amount left after paying all the above claimants would be returned to the Spanish Government and that if the amount of €1 million were to be insufficient to pay all the claimants who had submitted claims to the Claims Handling Office, the Spanish Government had undertaken to make payments to these claimants up to 30% of the amount assessed by the London Club and the 1992 Fund.
- 3.2.10 The Committee noted that since the conditions required had been met, the Director had increased the level of payments to 30% of the established claims for damage in Spain and in France (except in respect of the French Government's claim), with effect from 5 April 2006.
- 3.2.11 The French delegation stated that it was very pleased that it had been possible to increase the level of payments to 30% in France and expressed its gratitude to the Spanish and Portuguese Governments for the steps they had taken to bring this about. That delegation also expressed the hope that claimants would be rapidly compensated the difference between 15% and 30%.
- 3.2.12 The Spanish delegation thanked the French and Portuguese Governments and the Director for their support and efforts in making it possible to apportion the maximum amount available under the Conventions and to increase the level of payments to 30%.

CLAIMS FOR COMPENSATION

Spain

- 3.2.13 The Committee noted that since the manager of the Claims Handling Office in La Coruña had accepted an offer of employment elsewhere the Fund had appointed one of the local experts who was engaged by the London Club and the 1992 Fund to assess claims for compensation to take over the management of that Office and that, as a consequence, the Claims Handling Office would be moved to the local expert's office, which was nearby.
- 3.2.14 It was noted that, as at 30 April 2006, the Claims Handling Office in La Coruña had received 838 claims totalling €623 million (£428 million) including seven claims from the Spanish Government totalling €569.2 million (£391 million) submitted during the period October 2003 - June 2005 (see paragraph 3.2.16 below).
- 3.2.15 It was recalled that the claims by the Spanish Government related to costs incurred in respect of at sea and onshore clean-up operations, removal of the oil from the wreck, compensation payments to fishermen and shellfish harvesters, tax relief for businesses affected by the spill,

administration costs and costs relating to publicity campaigns. It was also recalled that the claims originally included items for the cost of clean-up operations in the Atlantic National Park amounting to €11.9 million (£8.2 million) and that these items had been withdrawn since funding for these operations had been obtained from another source. It was further recalled that the claim for the removal of the oil from the wreck, initially for €109 million (£75 million), had been reduced to €24 million (£16.5 million) to take account of funding obtained from another source (see paragraphs 3.2.29-3.2.32 below).

- 3.2.16 The Committee recalled that the first claim received from the Spanish Government in October 2003 for €383.7 million (£262 million) had been assessed on an interim basis by the Director in December 2003 at €107 million (£73 million), and that on that basis the 1992 Fund had made a payment of €16 050 000 (£11.1 million), corresponding to 15% of the interim assessment. It was also recalled that the Director had made a general assessment of the total of the admissible damage in Spain, concluding that the admissible damage would be at least €303 million (£207 million) and that on that basis, and as authorised by the Assembly, the Director had made an additional payment of €41 505 000 (£28.5 million), corresponding to the difference between 15% of €383.7 million or €57 555 000 and 15% of the preliminarily assessed amount of the Government's claim, €16 050 000. The Committee recalled that the payment had been made against the provision by the Spanish Government of a bank guarantee covering the above-mentioned difference (ie €41 505 000) from the Instituto de Credito Oficial, a Spanish bank with high standing in the financial market, and an undertaking by the Spanish Government to repay any amount of the payment decided by the Executive Committee or the Assembly.
- 3.2.17 It was noted that since December 2003, a number of meetings had been held with representatives of the Spanish Government, that a considerable amount of further information had been provided in support of its claims and that cooperation with representatives of the Spanish Government was continuing and progress being made on the assessment of all the claims submitted by the Government.
- 3.2.18 It was noted that of the other claims submitted, 65.7% had been assessed, that many of the remaining claims lacked sufficient supporting documentation and that further documentation had been requested from the claimants. It was also noted that 492 of these other claims, totalling €36.2 million (£25 million), had been approved for €3.3 million (£2.3 million) and that interim payments totalling €283 495 (£195 000) had been made at 15% of the assessed amounts in respect of 128 of the assessed claims^{<4>}. The Committee noted that following the increase in the level of payments referred to in paragraph 3.2.10, letters had been sent to these claimants offering them an additional payment corresponding to 15% of the assessed amount and that two such payments had been made. It was noted that the remaining approved claims awaited a response from the claimants or were being reassessed following claimants' disagreements with the assessed amounts. It was also noted that 157 claims totalling €21.8 million (£15 million) had been rejected, the majority because the claimant had not demonstrated that a loss had been suffered.
- 3.2.19 The Committee noted that a claim for €132 million (£90 million) from a group of 58 associations from Galicia, Asturias and Cantabria representing some 13 700 fishermen and shellfish harvesters submitted to the Claims Handling Office had been withdrawn since the claimants had received compensation from the Spanish Government (see paragraph 3.2.48 below).
- 3.2.20 It was recalled that at the Executive Committee's May 2004 session the Spanish delegation had stated that 67 towns had requested compensation totalling €37.6 million (£25.8 million) and that the four affected regions had estimated their damage at €150 million (£103 million). It was also recalled that at the February 2006 session that delegation had mentioned that agreements had

^{<4>} Compensation payments made by the Spanish Government to claimants have been deducted when calculating the interim payments.

been reached between the Spanish Government and all the regions and almost all the towns affected by the spill, but that there were four towns with which agreements had not been reached.

- 3.2.21 It was further recalled that the Spanish delegation had informed the Committee in June 2005 that the Spanish Government would submit claims for the costs incurred by the regions and towns that had been paid by the Government and for the costs incurred in the disposal of the oily residues, together with the claims assessed by the Consorcio de Compensación de Seguros (Conсорcio)^{<5>} (see paragraphs 3.2.33-3.2.39 below) by the end of 2005 or early in 2006. It was also recalled that at the Committee's February 2006 session the Spanish delegation had mentioned that it was working on the submission of the claim relating to the payments to the regions and towns in order to avoid duplication of claims already submitted. It was however noted that no such claim had so far been received from the Spanish Government.

France

- 3.2.22 The Committee noted that by 30 April 2006, 469 claims totalling €108 million (£74 million) had been received by the Claims Handling Office in Bordeaux. It was noted that 81% of the claims had been assessed by 30 April 2006, that many of the remaining claims lacked sufficient supporting documentation and that such documentation had been requested from the claimants. It was also noted that 381 claims had been assessed at €44 million (£30.2 million), that 360 claims had been approved for €43.7 million (£30 million) and that interim payments totalling €1 131 623 (£775 000) had been made at 15% of the assessed amounts in respect of 192 of the approved claims. It was noted that the remaining approved claims awaited a response from the claimants or were being re-examined following the claimants' disagreement with the assessed amount and that 40 claims totalling €1.7 million (£1.2 million) had been rejected because the claimants had not demonstrated that a loss had been suffered due to the incident.
- 3.2.23 It was recalled that 121 claims had been submitted by oyster farmers totalling €1.6 million (£1.1 million) for losses allegedly suffered as a result of market resistance due to the pollution. It was noted that the experts engaged by the London Club and the 1992 Fund had examined these claims and that 113 of them, totalling €1.1 million (£760 000), had been assessed at €383 489 (£264 000). The Committee noted that payments totalling €24 478 (£16 800) had been made in respect of 49 of these claims at 15% of the assessed amounts, that four claims were not supported by any documentation and that the experts appointed by the London Club and the 1992 Fund were examining the remaining four claims.
- 3.2.24 It was also noted that the Claims Handling Office had received 193 tourism-related claims totalling €24.6 million (£16.8 million), that 156 of these claims had been assessed at a total of €8.2 million (£5.6 million), that 149 claims had been approved for €8.0 million (£5.5 million) and that interim payments totalling €904 041 (£620 000) had been made at 15% of the assessed amounts in respect of 87 claims.
- 3.2.25 It was recalled that in May 2004, the French Government had submitted a claim for €67.5 million (£46 million) in relation to the costs incurred for clean-up and preventive measures. It was also recalled that the 1992 Fund and the London Club had provisionally assessed the claim at €31.2 million (£21.3 million) and that a request for further information had been sent to the French Government in August 2005 in order to enable the experts appointed by the 1992 Fund and the London Club to complete the assessment. The Committee noted that such information and further supporting documentation had been received in February 2006 and that the Fund's experts were carrying out a detailed assessment of the claim.
- 3.2.26 It was noted that a further 57 claims totalling €10.5 million (£7.3 million) had been submitted by local authorities for costs of clean-up operations, that 23 of these claims had been assessed

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A state-owned insurance organisation set up to pay claims for damage not normally covered by commercial insurance policies, such as damage due to terrorist activities or natural disasters.

and approved at €3.3 million (£2.3 million) and that interim payments totalling €148 127 (£101 000) had been made in respect of 19 claims at 15% of the assessed amounts.

- 3.2.27 The Committee noted that, following the increase in the level of payments referred to in paragraph 3.2.10, letters had been sent to the claimants referred to in paragraphs 3.2.23, 3.2.24 and 3.2.26, who had received interim payments at 15%, offering them an additional payment corresponding to 15% of the assessed amount and that two such payments had been made in April 2006.

Portugal

- 3.2.28 The Committee recalled that in December 2003 the Portuguese Government had submitted a claim for €3.3 million (£2.3 million) in respect of clean-up and preventive measures and that a meeting had been held in July 2004 between representatives of the 1992 Fund and representatives of the Government departments involved. It was recalled that, in February 2005, the Portuguese Government had provided the 1992 Fund with additional documentation in support of its claim, including a supplementary claim for €1.0 million (£690 000) for clean-up and preventive measures, and that the claim had been provisionally assessed at €1.86 million (£1.3 million). It was noted that, following receipt of further information, the claim had been assessed at €2 189 922 (£1.5 million) and that it was expected that the claim would be settled in the near future.

CLAIM FOR COSTS OF REMOVING OIL FROM THE WRECK

The claim

- 3.2.29 It was recalled that the Spanish Government had originally submitted a claim for €109.2 million (£75 million) for the cost of the operation to remove the oil from the wreck of the Prestige, including the costs of preparatory work and the feasibility trials conducted in the Mediterranean and at the wreck site. It was also recalled that in January 2006 the Spanish Government had confirmed that it had been awarded a concession of aid by the European Commission, that it had so far received a total of €50.9 million (£35 million) and that further payments totalling €33.1 million (£22.7 million) were pending. It was further recalled that as a result of this concession the Spanish Government had reduced its claim to €24 168 265 (£16.8 million), of which €4 785 000 (£3.3 million) related to the costs incurred in 2003 and €19 383 265 (£13.3 million) related to the costs incurred in 2004.
- 3.2.30 It was recalled that at its February 2006 session the Executive Committee had decided that some of the costs incurred in 2003 in respect of sealing the oil leaking from the wreck and various surveys and studies were admissible in principle, but that the claim for costs incurred in 2004 relating to the removal of oil from the wreck was inadmissible (document 92FUND/EXC.32/6, paragraph 3.28).
- 3.2.31 It was recalled, however, that some delegations had considered that it was important that the Funds were prepared to deal with similar claims in the future in a more flexible manner. It was recalled that the Executive Committee had instructed the Director to carry out an examination of the admissibility criteria relating to claims for costs of preventive measures, in particular for the extraction of oil from sunken vessels, with a view to enabling the 1992 Fund Assembly at its October 2006 session to discuss possible alternatives for the existing criteria for admissibility within the framework of the 1992 Conventions (document 92FUND/EXC.32/6, paragraph 3.2.81). The Committee noted that the Director was considering this issue.
- 3.2.32 The Committee noted that, in accordance with the Executive Committee's decision as set out in paragraph 3.2.30, an assessment was being carried out of the admissible costs of activities that had had a bearing on the assessment of the pollution risk posed by the oil in the wreck and that had been incurred by the Spanish Government in 2003 prior to the removal of oil from the wreck.

PAYMENTS AND OTHER FINANCIAL ASSISTANCE BY THE SPANISH AUTHORITIES

- 3.2.33 It was recalled that the Spanish Government and regional authorities had made payments of €40 (£28) per day to all those directly affected by the fishing bans, including shellfish harvesters, inshore fishermen and associated onshore workers with a high dependence on the closed fisheries, such as fish vendors, fishing net repairers and employees of fishing co-operatives, fish markets and ice factories. It was recalled that some of these payments had been included in subrogated claims by the Spanish authorities pursuant to Article 9.3 of the 1992 Fund Convention. It was also recalled that the Spanish Government had provided aid to other individuals and businesses affected by the oil spill in the form of loans, tax relief and waivers of social security payments.
- 3.2.34 It was recalled that in June 2003 and July 2004 the Spanish Government had adopted legislation in the form of two Royal Decrees (Real Decreto-Ley) making available a total amount of €249.5 million (£172 million) to compensate in full certain categories of victims of the pollution and that to receive compensation the claimants had to renounce the right to claim compensation in any other way in relation to the *Prestige* incident and transfer their rights of compensation to the Spanish Government. It was also recalled that the Decrees provided that the assessment of claims would be made following the criteria used to apply the 1992 Civil Liability and Fund Conventions.
- 3.2.35 It was recalled that at the February 2004 session of the Executive Committee the Spanish delegation had informed the Committee that the Spanish Government had received almost 29 000 claims for compensation from victims of the *Prestige* incident who wished to use the payment mechanism set out in the first Royal Decree, of which some 22 800 related to groups of workers in the fisheries sector, which would be assessed by means of a system using either a formula ('estimación objetiva' or a scale) and that some 5 000 claims of other groups would be subject to individual assessments.
- 3.2.36 It was also recalled that in May 2005 the Spanish Government had informed the 1992 Fund that agreements had been reached with some 19 500 workers in the fisheries sector and that payments totalling some €88 million (£60.5 million) had been made to them under the Royal Decrees.
- 3.2.37 It was recalled that the 1992 Fund had been informed by the Spanish Government in 2004 that claims, which under the Decrees would be subject to individual assessment, would be assessed by the Consorcio and that as at 31 January 2006, 971 claims totalling €229.9 million (£157 million) had been received by the Consorcio relating to some 3 700 persons. The Committee recalled that since the Royal Decrees provided that the assessment of claims would be made following the criteria used to apply the 1992 Civil Liability and Fund Conventions, meetings had been held between representatives of the Consorcio and of the 1992 Fund to discuss the criteria.
- 3.2.38 The Committee recalled that the Consorcio had requested the assistance of the experts appointed by the London Club and the 1992 Fund in the assessment of 241 of these claims for a total of €47.8 million (£32.8 million). It was recalled that a number of the claims that had been referred to these experts were not supported by sufficient evidence to demonstrate the loss claimed and that the Consorcio had requested further evidence and information from the claimants. It was noted that the experts of the Consorcio and the experts appointed by the London Club and the 1992 Fund had made joint assessments of 193 claims, 183 of which, for €16.6 million (£11.4 million), had been approved by the 1992 Fund and the London Club for €2.1 million (£1.4 million). It was noted that 134 claims included in the 241 claims with which the Consorcio had requested assistance had also been submitted directly to the Claims Handling Office and that details of the assessments of 83 of these claims had been provided, with the approval of the claimants, to the Consorcio. It was noted that further assessments were being carried out.

- 3.2.39 The Spanish delegation informed the Committee that 381 of the claims assessed by the Consorcio de Compensación de Seguros referred to in paragraph 3.2.37 had been rejected due to lack of supporting documentation or lack of evidence of the loss. This delegation also stated that, from the assessment of 90% of the claims examined through this procedure, it could be deduced that the maximum amount to be paid by the Spanish government in respect of these claims would be some €50 million.

PAYMENTS AND OTHER FINANCIAL ASSISTANCE BY THE FRENCH AUTHORITIES

- 3.2.40 The Committee recalled that the French Government had introduced a scheme to provide payments in excess of the amounts paid by the 1992 Fund to claimants in the fishery and shellfish harvesting sectors who had made a request to that effect by 13 December 2004 and that payments had been made in January 2005 to 175 claimants for a total amount of €1.15 million (£790 000).
- 3.2.41 It was recalled that the French Government had informed the Director that these payments were advances on the payments to be made by the 1992 Fund and were to be repaid by the claimants and that the Government would not pursue subrogated claims against the 1992 Fund in respect of the payments made.

INVESTIGATIONS INTO THE CAUSE OF THE INCIDENT

- 3.2.42 The Committee recalled that investigations into the cause of the incident had been carried out by the Bahamas Maritime Authority (ie the authority of the Flag State) (document 92FUND/EXC.28/5, paragraphs 13.1.1 – 13.1.7), the Spanish Ministry of Public Works (Ministerio de Fomento) (document 92FUND/EXC.29/4, paragraphs 13.2.1 – 13.2.5) and the French Ministry of Transport and the Sea (document 92FUND/EXC.29/4, paragraphs 13.4.1 - 13.4.10).
- 3.2.43 It was recalled that the Criminal Court in Corcubión in Spain was carrying out an investigation into the cause of the incident in the context of criminal proceedings. It was in particular recalled that the Court was investigating the role of the master of the *Prestige*, of a civil servant who had been involved in the decision not to allow the ship into a port of refuge in Spain and of a manager of the ship's management company.
- 3.2.44 It was also recalled that an examining magistrate in Brest was carrying out a criminal investigation into the cause of the incident.
- 3.2.45 The Committee noted that the 1992 Fund continued to follow the ongoing investigations through its Spanish and French lawyers.

COURT ACTIONS

Spain

- 3.2.46 The Committee noted that some 2 360 claims had been lodged in the legal proceedings before the Criminal Court in Corcubión (Spain) and that 377 of these claims involved persons who had submitted claims directly to the London Club and 1992 Fund through the Claims Handling Office in La Coruña. It was noted that details of the losses allegedly suffered in respect of some of these court actions had been provided to the Court and were being examined by the experts engaged by the 1992 Fund.
- 3.2.47 It was recalled that the Spanish Government had taken legal action in the Criminal Court in Corcubión on its own behalf and on behalf of regional and local authorities as well as on behalf of 971 other claimants or group of claimants. The Committee noted that a number of other claimants had also taken legal actions and the Court was assessing whether these claimants were eligible to join the proceedings.

- 3.2.48 The Committee recalled that on 23 September 2005, the legal representative of the largest group of victims in the fisheries, shellfish harvesting and fish-farming sector had submitted a document to the Instructing Magistrate in Corcubión in which it was stated that he had signed settlement agreements with the General Administration of the Spanish State, and that in accordance with those agreements, any action or compensation to which the victims could be entitled as a result of the *Prestige* incident, against the Spanish State as well as against the 1992 Fund, were withdrawn. It was recalled that the withdrawal affected approximately 13 700 persons, covering approximately 75% of the fisheries sector affected by the *Prestige* incident. It was noted that other claimants that had settled with the Spanish Government under the Royal Decrees would also withdraw their court actions.

France

- 3.2.49 The Committee noted that the French Government and 218 other claimants had taken legal action against the shipowner, the London Club and the 1992 Fund in 15 courts in France, requesting compensation totalling some €110 million (£75.6 million), including €67.7 million (£46.5 million) claimed by the Government.

Portugal

- 3.2.50 The Committee noted that the Portuguese Government had taken legal action in the Maritime Court in Lisbon against the shipowner, the London Club and the 1992 Fund claiming compensation for €4.3 million (£3.0 million). It was noted, however, that at the request of the parties the Court had suspended the proceedings until 10 July 2006 in order to enable the parties to settle the Government's claims out of court.

United States

- 3.2.51 The Committee recalled that the Spanish State had taken legal action against the American Bureau of Shipping (ABS), the classification society of the *Prestige*, before the Federal Court of first instance in New York requesting compensation for all damage caused by the incident, estimated initially to exceed US\$700 million (£378 million) and estimated later to exceed US\$1 000 million (£540 million). It was also recalled that the Spanish State had maintained, *inter alia*, that ABS had been negligent in the inspection of the *Prestige* and had failed to detect corrosion, permanent deformation, defective materials and fatigue in the vessel and had been negligent in granting classification.
- 3.2.52 It was recalled that ABS had denied the allegation made by the Spanish State and in its turn had taken action against the State, arguing that if the State had suffered damage this was caused in whole or in part by its own negligence. It was also recalled that ABS had made a counterclaim and requested that the State should be ordered to indemnify ABS for any amount that ABS may be obliged to pay pursuant to any judgement against it in relation to the *Prestige* incident. It was further recalled that the New York Court had dismissed the counterclaim by ABS on the grounds that the Spanish State was entitled to sovereign immunity and that ABS was seeking reconsideration by the Court or permission to appeal.
- 3.2.53 The Committee recalled that as part of the discovery procedure in the New York litigation, ABS had requested the production by the Spanish State of all documents and material forming part of the file of the Criminal Court in Corcubión investigating the *Prestige* incident, as well as all the documents and material reviewed by the Spanish Permanent Commission for the Investigation of Maritime Accidents. It was recalled that the Spanish State had responded, asserting that the requested documents and material were protected from disclosure by privilege under Spanish procedural law. It was recalled that, in a decision rendered in August 2005, the judge supervising the discovery procedure had denied the Spanish State's assertion of privilege and ordered the production of the documents. It was noted that the Spanish State had appealed against this decision and that the disputed documents had not yet been produced.

- 3.2.54 It was recalled that in September 2005, the Spanish State had submitted a petition to the Criminal Court in Corcubión maintaining that these documents and material were privileged under Spanish procedural law and could not be provided to ABS and had requested the Criminal Court to take a decision on this issue. It was also recalled that in a decision rendered in September 2005, the Court had decided that these documents and material were privileged to the parties who had joined in the criminal proceedings and should therefore not be made available to ABS.
- 3.2.55 The Committee recalled that in August 2005 ABS had submitted a request to the New York Court for a summary judgement dismissing the Spanish State's complaint, arguing that it was an agent or servant of the shipowner and that therefore, in accordance with Article III.4(a) of the 1992 Civil Liability Convention, no claim for compensation for pollution damage could be made against it unless the damage had resulted from ABS's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. It was also recalled that ABS had maintained that since the United States was not a Contracting State to the Civil Liability Convention and the pollution damage had occurred in Spain, the United States Courts were not competent to hear the case. It was noted that the Court had so far not taken a decision on the request.
- 3.2.56 The Committee recalled that regional authorities of the Basque Region (Spain) had taken legal action against ABS in the Federal Court of first instance in Houston, Texas, claiming compensation for clean-up costs and payments made to individuals and businesses for US\$50 million (£27 million). It was noted that, since the Spanish Government had compensated the Basque Region, it was likely that this action would be withdrawn in the near future.

3.3 N^o7 Kwang Min

- 3.3.1 The Executive Committee took note of the information regarding the N^o7 Kwang Min incident as set out in document 92FUND/EXC.33/7.

The incident

- 3.3.2 The Committee recalled that on 24 November 2005 the Korean tanker N^o7 Kwang Min (161 GT) had collided with the Korean fishing boat *Chil Yang N^o1* (139 GT) in the port of Busan, Republic of Korea. It was recalled that a total of 64 tonnes of heavy fuel oil had escaped into the sea from a damaged cargo tank, that the remaining oil onboard the N^o7 Kwang Min had been transferred to a number of other vessels and that the N^o7 Kwang Min had subsequently been taken to a shipyard in Busan.
- 3.3.3 It was also recalled that the 1992 Fund had appointed a team of Korean surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries and mariculture.

Clean-up operations

- 3.3.4 It was recalled that the Korean Coast Guard, the Korea Marine Pollution Response Corporation and seven private clean-up contractors had promptly mobilised 36 pollution response vessels, that defensive booms had been deployed to protect port installations such as shipyards and fish markets as well as the hulls of a number of ships berthed in the port and that as a result of this rapid response serious property damage and consequential economic losses had been prevented. The Committee recalled that most of the on water clean-up resources had been withdrawn on 27 November 2005.
- 3.3.5 It was also recalled that the remaining spilled oil, as well as considerable quantities of oiled debris, had stranded on the shorelines to the west and south of the island of Yeongdo and that approximately 5 kilometres of shoreline composed of rocks, boulders and pebbles had been

polluted to varying degrees. It was recalled that four private clean-up contractors had been appointed by the shipowner to undertake shoreline clean-up operations using predominantly manual methods to remove bulk oil, followed by high pressure water washing to remove oil stains. It was also recalled that some oiled sections of shoreline were fronted by cliffs, which made access difficult both from the land and from the sea and that a landing craft had eventually been able to land an earth excavator on the island in order to construct a temporary road and causeway to facilitate the removal of collected oil by barge. The Committee recalled that shoreline clean-up operations had been completed on 18 January 2006.

Impact of the spill

- 3.3.6 It was recalled that drifting oil at sea had contaminated the hulls of a number of vessels, including those engaged in the clean-up operations.
- 3.3.7 It was also recalled that some of the affected shorelines supported village-fishing grounds and that the activities of some 80 female divers engaged in the gathering of sub-tidal species of plants and animals had been interrupted.
- 3.3.8 It was also recalled that the oil had affected a number of seaweed (sea mustard and kelp) cultivation farms as it passed through the supporting structures, contaminating buoys and ropes. It was however noted that, as a result of oiled equipment having been cleaned or replaced quickly, there had been no serious damage to the seaweed products.
- 3.3.9 It was recalled that six seafood restaurants had reported alleged mortalities of fish as a result of oil entering the sub-surface intakes supplying seawater to the aquaria in which they were being kept.

Applicability of the 1992 Fund Convention

- 3.3.10 The Committee recalled that the limitation amount applicable to the *N^o7 Kwang Min* under the 1992 Civil Liability Convention was 4.51 million SDR (£3.8 million). It was also recalled that in December the Korean Ministry of Maritime Affairs and Fisheries had informed the 1992 Fund that the *N^o7 Kwang Min* was not insured for pollution liabilities, that the shipowner had very few assets and that the value of the *N^o7 Kwang Min*, which was built in 1977, was such that the proceeds from its sale would be insufficient to cover the claims for compensation for pollution damage arising from the incident.
- 3.3.11 The Committee recalled that, in view of the fact that the shipowner was financially incapable of meeting his obligations under the 1992 Civil Liability Convention to pay compensation in full to persons suffering pollution damage arising out of the incident, the 1992 Fund was liable in accordance with Article 4.1 (b) of the 1992 Fund Convention to pay compensation.
- 3.3.12 It was recalled that at its February 2006 session, the Executive Committee had endorsed the position taken by the Director as regards his authority to settle claims under Internal Regulation 7.4 and had also authorised him to make final settlement of all further claims arising out of the incident (document 92/FUND/EXC.32/6, paragraph 3.3.12).

Claims for compensation

- 3.3.13 It was noted that, as at 9 May 2006, ten claims totalling Won 1 970 million (£1.5 million) in respect of costs of clean-up and preventive measures had been settled for a total of Won 1 368 million (£1.1 million) and that three claims for clean-up costs totalling Won 699 million (£540 000) were being assessed.
- 3.3.14 It was also noted that the owners of six live seafood restaurants located in the polluted area had submitted claims totalling Won 163 million (£95 000) for alleged mortalities of fish as a result of oil entering their aquaria via submerged seawater intakes, for loss of earnings as a result of

cancellations of bookings and other unspecified damages. It was noted that these claims had been settled at Won 3.1 million (£1 800).

- 3.3.15 It was noted that claims totalling Won 154 million (£90 000) by 81 women divers for loss of earnings due to interruption of their shellfish harvesting and sales activities had been settled for Won 33.4 million (£20 000).
- 3.3.16 It was also noted that claims by nine seaweed (sea mustard) cultivators totalling Won 371 million (£216 000) for property damage and production disruption had been settled for Won 42.6 million (£25 000).
- 3.3.17 The Committee noted that further fishery claims totalling Won 93 million (£55 000) were being assessed.
- 3.3.18 The Korean delegation thanked the Acting Director for the document relating to the incident and expressed its gratitude to the Fund for having settled most claims for compensation in such a short time period.

4 Any other business

The Committee noted that the Legal Counsel, Mr Masamichi Hasebe, would leave the IOPC Funds at the end of June after five years with the Funds. The Chairman, on behalf of himself and the Committee, thanked Mr Hasebe for his contribution to the work of the IOPC Funds and extended his best wishes for the future.

5 Adoption of the Record of Decisions

The draft Record of Decisions of the Executive Committee, as contained in document 92FUND/EXC.33/WP.1, was adopted, subject to certain amendments.
